

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOAN TRUMAN SMITH

V.

BRYCO ARMS, Inc., et al.

CIVIL ACTION NO:
CV 02 3029 (JBW)

Honorable Jack B. Weinstein

**DEFENDANTS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF VARIOUS MOTIONS TO DISMISS
FOR INSUFFICIENCY OF SERVICE OF PROCESS
AND LACK OF PERSONAL JURISDICTION**

Defendants Bruce Jennings, Janice Jennings, Rhonda Jennings, Kimberly Jennings, Bradley Jennings, Jennings Firearms, Inc. of Nevada, Jennings Firearms, Inc. of California, Calwestco, Inc., RKB Investments, the Rhonda Jennings Nevada Trust, the Kimberly Jennings Nevada Trust, and the Bradley Jennings Nevada Trust¹, by and through their undersigned attorneys, hereby submit this Reply Memorandum of Law in Support of various Motions to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(2) and (5), on the grounds of insufficiency of service of process and lack of personal jurisdiction, and in support state:

I. Procedural Status

Since the inception of this litigation, the Jennings Defendants have filed various Motions to Dismiss for insufficiency of service of process and lack of personal jurisdiction. Currently, there are twelve (12) pending motions to dismiss for lack of personal jurisdiction filed on behalf of Defendants Bruce Jennings, Janice Jennings, Rhonda Jennings, Kimberly Jennings, Bradley Jennings, Jennings Firearms, Inc. of Nevada, Jennings Firearms, Inc. of California, Calwestco, Inc., RKB Investments, the Rhonda Jennings Nevada Trust, the Kimberly Jennings Nevada Trust, and

¹ For purposes of this Reply, the group of defendants listed herein will be referred to as the "Jennings Defendants."

the Bradley Jennings Nevada Trust. There is one (1) pending motion to dismiss for insufficiency of service of process filed by Defendant Bruce Jennings.

However, there are two motions addressed by Plaintiff in her Opposition to which the Defendants take exception. Defendant RKB Investments ("RKB") contends that its Motion to Dismiss for lack of personal jurisdiction is premature as Plaintiff has failed to re-serve RKB in accordance with this Court's Order dated October 7, 2002. As requested by Plaintiff's Counsel at a hearing before this Court on September 5, 2002, and as stated in this Court's Order, Plaintiff was provided an additional thirty (30) days, until November 7, 2002, to serve RKB. *See Court Order dated October 7, 2002*, attached hereto as Exhibit 1; *See Transcript of Proceedings before the Honorable Jack B. Weinstein, Case No. 02-CV-3029, dated September 5, 2002, pp. 14-15*, attached hereto as Exhibit 2.

No attempts have been made since October 7, 2002 to effect service on RKB. In Paragraph 17 of her Affirmation in Opposition to the Motions to Dismiss, Ms. Connell, counsel for the Plaintiff, states that RKB was served "by leaving a copy of the summons and complaint with a Mr. Tony Acosta at the location of RKB" and was also served "through service upon its principals". *See Affirmation in Opposition to the Motions to Dismiss, p.4, ¶17*. The attempted service of RKB upon Mr. Acosta was deemed ineffective by this Court at the September 5, 2002 hearing. As to service of RKB upon "its principals", or upon any other proper entity or individual, Plaintiff's Counsel has never provided Counsel for the Jennings Defendants, nor this Court, with an affidavit attesting to such proof of service on RKB. Plaintiff has failed to effect service upon RKB within the additional time frame set forth by this Court, and accordingly, RKB should be dismissed from this action.

Additionally, in Paragraph 16 of Ms. Connell's Affirmation in Opposition to the Motions to Dismiss, she refers to Motions to Dismiss for lack of personal jurisdiction filed by Defendants, the

Rhonda Jennings California Trust, Kimberly Jennings California Trust, and Bradley Jennings California Trust (the "California Trusts"). *See Affirmation in Opposition to the Motions to Dismiss*, p.4, ¶16. There were no motions to dismiss filed on behalf of the California Trusts. Defendants contend that no attempt has been made to serve the California Trusts. Defendants did agree to accept service of process on behalf of the Rhonda Jennings Nevada Trust, the Kimberly Jennings Nevada Trust, and the Bradley Jennings Nevada Trust, and motions for lack of personal jurisdiction were filed accordingly; however, Defendants are not aware of any attempts to serve the California Trusts. Furthermore, Plaintiff's Counsel has never provided Counsel for the Jennings Defendants, nor this Court, with an affidavit attesting to proof of service on the California Trusts. As such, responses to the Complaint by the California Trusts are premature.

Lastly, Defendants Bryco Arms, Inc. ("Bryco") and B. L. Jennings, Inc. ("BLJ") have filed Answers to the Complaint and are not contesting jurisdictional issues at this time. Plaintiff raises a brief argument in her Opposition that Bryco and BLJ are properly subject to this Court's jurisdiction. Additionally, Plaintiff baselessly concludes that, because Bryco and BLJ are not moving before this Court on pending motions and "are admittedly going to have to defend this action", the Jennings Defendants should also remain in this case since all are represented by the same counsel and have been sued in various jurisdictions across the country and in New York. *See Memorandum of Law in Opposition to Various Defense Motions to Dismiss*, p.7. Defendants are not aware of any legal provisions that allow for jurisdiction by this or any other Court on such bald connections.

II. Motions to Dismiss for Lack of Personal Jurisdiction

A. Plaintiff Has Failed To Show That Defendants Are Subject To Personal Jurisdiction By This Court Under The New York Long Arm Statute

The Jennings Defendants filed various Motions to Dismiss based on the application and analysis of personal jurisdiction under CPLR §302(a)(3) of the New York Long Arm Statute. Plaintiff's Opposition completely disregards the New York Long Arm Statute as a basis for establishing personal jurisdiction over the Jennings Defendants. In fact, the Opposition is completely absent of any analysis under New York Law that this Court has personal jurisdiction over the Jennings Defendants. Rather, Plaintiff's Opposition contains a long tirade of mere conclusory allegations against the defendants that jurisdiction is somehow proper because "Bruce Jennings uses the various corporate entities herein as "dummies" through which he conducts his business of manufacturing and distributing handguns." *See Memorandum of Law in Opposition to Various Defense Motions to Dismiss*, p.23. Plaintiff's attempt to pierce the corporate veil by asserting baseless factual statements against the Defendants ignores the arguments, based upon analysis of CPLR §302(a)(3), raised by the Defendants, and as such, the Opposition is essentially non-responsive to the substantive issues presented in the various Motions to Dismiss.²

Interestingly, Plaintiff's baseless accusations against the Jennings Defendants are a mirror image of the allegations raised against Defendant Bruce Jennings in the matter of *NAACP v. American Arms, Inc., et al.*, Case No. CV-99-3999. In *NAACP*, Defendant Bruce Jennings was

² In an attempt to support the groundless allegations against the Jennings Defendants, Plaintiff attaches various exhibits, including Exhibits B, E, F, and K, that appear to be obtained from the Internet or other unidentified sources. At this stage, "the Court's inquiry is limited to the facts in the complaint or in documents attached to the Complaint." *Newman v. Holder*, 101 F. Supp.2d 103, 105 (E.D.N.Y. 2000), *citing Newman & Schwartz v. Asplundh Tree Expert Co.*, 102 F.3d 660, 662 (2d Cir. 1996). These exhibits were not attached to the complaint, nor referenced in the Complaint and should be disregarded in consideration of the Plaintiff's Opposition.

personally dismissed on May 10, 2000 by this Court because the Plaintiff lacked evidence in support of its attempt to pierce the corporate veil. *See Transcript of Conference before The Honorable Jack B. Weinstein, NAACP v. Acusport Corp., et al.; NAACP, et al, American Arms, et al., Case. Nos. CV-99-7037, 99-3999, dated May 10, 2000, pp. 6:22-24*, attached hereto as Exhibit 3,. Then, in May, 2002, Plaintiffs attempted to reinstate its claims against Bruce Jennings as the alter ego of Defendants Bryco and BLJ. Plaintiff was permitted to undertake limited discovery against Bruce Jennings to explore its potential piercing the corporate veil claim, including deposing Bruce Jennings and receipt of production of numerous documents such as corporate tax returns, bank statements, incorporation documents, board meeting minutes, and certificates of good standing for Bryco and BLJ.³

On September 5, 2002, this Court denied Plaintiff's Motion For Reinstatement Of Claims Against Bruce Jennings, holding that the evidence was insufficient to show that Bryco and BLJ were not valid corporations. *See Transcript of Conference before The Honorable Jack B. Weinstein, NAACP v. Acusport Corp., et al., Case. Nos. CV-99-7037, 99-3999, dated September 5, 2002, p. 16:10-12*, attached hereto as Exhibit 4. Likewise, the Plaintiff will not succeed in a corporate veil theory in this case. The evidence that exists in the *NAACP* case for Bryco and BLJ is identical to the evidence that Plaintiffs would be permitted to uncover in this action in pursuit of any alter ego claim. This Court even appeared inclined to consider dismissing Bruce Jennings from this action

³ Although Plaintiff states in her Opposition that Defendants did not provide copies of these various documents in support of its current pending Motions to Dismiss, Plaintiff certainly has possession of these documents from the *NAACP* action. Furthermore, it is Plaintiff's burden to establish the facts necessary to maintain personal jurisdiction, not the Defendants. Although, Defendants contend that the numerous corporate documents produced to Plaintiffs in the *NAACP* case strongly support the existence of the proper corporate structure of Bryco and BLJ and further enhance Defendants arguments that all the Jennings Defendants should be dismissed from this action.

under the same baseless alter ego theory asserted in *NAACP*; however, the issue was not ripe to consider as it was not presented in the various pending Motions to Dismiss. Ex. 2, p.10. Although, when asked by this Court, Plaintiff's Counsel acknowledged that the issues against Bruce Jennings were the same in this case as in the *NAACP* matter. *Id.*

B. Plaintiff, Not Defendants, Bears The Burden Of Proving Personal Jurisdiction Under New York Law

Despite the general and repeated accusations in the Opposition about lack of corporate form and structure and the need to pierce the corporate veil of the Jennings Defendants' "enterprise", Plaintiff fully ignores its obligation in opposition to the Motions to Dismiss before this Court. Plaintiff, not Defendants, bears the burden to prove jurisdiction under New York law by preponderance of the evidence and she has completely failed to meet that standard. *Hoffritz for Cutlery, Inc. v. Amajac, Ltd.*, 763 F.2d 55, 56 (2d Cir. 1985), citing *United States v. First National City Bank*, 379 U.S. 378, 381-82, 13 L. Ed. 2d 365, 85 S. Ct. 528 (1965); *Arrowsmith v. United Press Int'l.*, 320 F.2d 219, 223 (2d Cir. 1963)(en banc). "[C]onclusory allegations without an elucidation of supporting facts will not suffice to meet Plaintiff's burden." *Abbacor, Inc. v. Miller, et al.*, 2001 U.S. Dist. Lexis 13385, *7 (S.D.N.Y. Aug. 31, 2001).

Throughout her Opposition, plaintiff presents general arguments alleging that the Defendants have failed to provide evidence to disprove plaintiff's allegations regarding "ownership interest in Bryco or participation in schemes to secret assets from creditors." These accusations are based on plaintiff's alter ego theories against the Defendants which are not the subject or basis of the various Motions to Dismiss submitted by the Jennings Defendants. It bears repeating that the pending Jennings Defendants' Motions to Dismiss for lack of personal jurisdiction are based upon CPLR §302(a)(3) of the New York Long Arm Statute, and not upon any alleged corporate veil claims

loosely asserted by the Plaintiff in her Complaint. In support of the various Jennings Defendant's Motions to Dismiss, each Defendant submitted an affidavit that clearly establishes the requisite proof to defeat personal jurisdiction under New York Law.⁴ Each defendant strongly attests to lack of any conduct that would subject them to jurisdiction under New York's long arm statute, including no personal conduct with, transaction of business in, or traveling to the State of New York for any purpose. Furthermore, no individual defendant has been engaged in the firearms business in their personal capacity in any manner or at any time. *See Affidavits of Jennings Defendants submitted in support of various Motions to Dismiss for Lack of Personal Jurisdiction.* Plaintiff's allegations in the Complaint, and the Opposition, do not identify any specific tortious acts inside or outside the State of New York committed by the Jennings defendants that would subject them to jurisdiction in New York. Therefore, there is no basis for personal jurisdiction by this Court over the Jennings Defendants under the New York Long Arm Statute.

It is the plaintiff's burden to make a factually supported, prima facie showing necessary to defeat jurisdictional testing motions. Plaintiff's averment of facts must be sufficient to allow the trier of fact to establish jurisdiction over the defendants. *Ball v. Metallurgie Hoboker-Overpelt, S.A.*, 902 F.2d 194, 196 (2d Cir. 1990), *cert. denied*, 498 U.S. 854, 112 L. Ed. 2d 116, 111 S. Ct. 150 (1990)(citations omitted). Since Plaintiff disregarded the proper standard under CPLR §308 for establishing personal jurisdiction over the Jennings Defendants and further failed to provide fruitful

⁴ In her Opposition, Plaintiff claims that she did not receive a copy of Rhonda Jennings' affidavit. Rhonda Jennings' affidavit with attachments, in support of her Motion to Dismiss for Lack of Personal Jurisdiction, was filed electronically with this Court on October 2, 2002, and mailed, via first class mail, to counsel for the Plaintiff on the same date. Counsel for Defendant forwarded another copy of the affidavit of Rhonda Jennings to Counsel for the Plaintiff on February 21, 2003.

evidence in support of such argument, the Motions to Dismiss for Lack of Personal Jurisdiction against the Jennings Defendants should be accordingly dismissed.

III. Defendant Bruce Jennings' Second Motion to Dismiss for Insufficiency of Service of Process

A. Service Of Process Of Defendant Bruce Jennings Was Not Effected In Compliance With CPLR §308(2) Or Fed. R. Civ. P. 4(e)(2)

Defendant Bruce Jennings contests Plaintiff's attempt to serve him at his residence in Daytona, Florida since, once again, the Plaintiff's process server left the summons and complaint with an individual who was not designated, nor authorized by appointment or by law, to receive or accept service of process or summons for Bruce Jennings. *See Defendant Bruce Jennings' Memorandum of Law in Support of Second Motion to Dismiss for Insufficiency of Service of Process, Exhibit 1, ¶4, Exhibit 5, ¶5.*

Plaintiff's Opposition cites to New York Civil Practice §308(2) as governing service upon an individual. Defendant Bruce Jennings Motion applies Fed. R. Civ. P. 4(e)(2) to the method of effective service on an individual. However, whether this Court evaluates the service upon Bruce Jennings under CPLR §308(2) or under Fed. R. Civ. P. 4(e)(2), service of process on Bruce Jennings is improper. CPLR §308(2) permits service "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place abode of the person to be served." Fed. R. Civ. P. 4(e)(2) provides for similar service at the "individual's dwelling place or usual place of abode with some person of suitable age or discretion then residing therein."

By Plaintiff's own admissions, the process server made several unsuccessful attempts to serve Bruce Jennings at his "dwelling place or usual place of abode" and decided to leave, unsuccessfully, the summons and complaint with a security guard for the community where Bruce

Jennings resides. Plaintiff acknowledges in her Opposition that Mr. Wood, the security guard with whom the process server attempted to leave the papers, would not accept service. *See Memorandum of Law in Opposition to Various Defense Motions to Dismiss*, p.20. Furthermore, Mr. Wood clearly states, in his affidavit in support of Defendants Bruce Jennings' Second Motion to Dismiss, that he was not, nor has he ever, been designated or authorized by appointment or by law to receive or accept service of process or summonses on behalf of Bruce Jennings. *See Defendant Bruce Jennings' Memorandum of Law in Support of Second Motion to Dismiss for Insufficiency of Service of Process*, Ex. 5, ¶5.

Plaintiff attempts to argue that service is sufficient where papers are left with a security guard in a gated community. *See Memorandum of Law in Opposition to Various Defense Motions to Dismiss*, p.21. However, Plaintiff plainly misstates when such service is permitted. If the security guard does not permit access to the community or residence of the person to be served, then delivery upon a security guard at a gatehouse may be upheld as proper service. *See Costine v. St. Vincent's Hosp. & Med. Ctr. of New York*, 173 A.D.2d 422, 422, 570 N.Y.S.2d 50, 50 (N.Y. App. Div. 1991). Plaintiff's process server was permitted access to the community and Bruce Jennings' residence on twelve occasions to attempt service and, therefore, service upon the security guard is not effective.

Plaintiff further argues that the "guardhouse could be considered to be the outside boundary of Mr. Jennings' residence" and that service in this manner upon the guard would be effective, alternative service since the process server was not able to serve Mr. Jennings at his house. However, the caselaw referenced by the Plaintiff in support of this proposition is misconstrued. Service is only permitted in the "general vicinity" of the person to be served if he resists or refuses to accept process. *See McDonald v. Ames Supply Co.*, 22 N.Y.2d 111, 115, 291 N.Y.S.2d 328, 331, 238 N.E.2d 726, 728 (1968); *Patane v. Romeo*, 235 A.D.2d 649, 650, 652 N.Y.S.2d 142, 150 (N.Y.

App. Div.1997), *appeal denied*, 89 N.Y.2d 813, 658 N.Y.S.2d 243 (N.Y. 1997). Plaintiff makes no assertions, nor has any proof, that Bruce Jennings was refusing or resisting service. The process server was simply unable to locate Mr. Jennings, or an individual of suitable age and discretion, on the dates and times that service was attempted on Mr. Jennings at his residence.

Plaintiff then argues alternatively that, if service on the security guard is improper, Mr. Jennings still had actual notice of the lawsuit, making such service upon him valid. Strict compliance with Federal Rule of Civil Procedure 4 is required. *R. Griggs Group Ltd. v. Filanto Spa*, 920 F. Supp 1100, 1103 (D. Nev. 1996). The formal requirements of Rule 4 must be met regardless of whether or not the defendant has actual notice of the lawsuit. *Baade v. Price*, 175 F.R.D. 403, 405 (D.D.C. 1997), *citing Adams v. Allied Signal Gen. Aviation Avionics*, 74 F.3d 882, 885 (8th Cir. 1996). "When the requirements for service of process have not been met, it is irrelevant that the defendant may have actually received the documents." *Raschel v. Rish*, 69 N.Y.2d 694, 697, 512 N.Y.S.2d 22, 24, 504 N.E.2d 389, 390 (N.Y. App. Div.1986).

Since service of process upon Bruce Jennings was not undertaken properly in compliance with CPLR§ 308(2) or Fed. R. Civ. P. 4(e)(2), dismissal of Defendant Bruce Jennings from the instant action is appropriate.

B. Plaintiff Should Not Be Permitted to Serve Bruce Jennings Under CPLR §308(6)

Plaintiffs mention that this Court seemed inclined, at the hearing on September 5, 2002, to grant permission to serve legal counsel for Defendant Bruce Jennings if service on him could not be effected. However, at the hearing on September 5, 2002, this Court denied the Plaintiff's request for service in accordance with CPLR §308(6) as a matter of due process. Ex. 2, p.16.

CPLR §308(6) pertains to court ordered service which may be permitted if service is impracticable. Impracticable service, by example, involves unsuccessful efforts to serve an individual because that person has left no forwarding address or that person's whereabouts cannot be determined. *See Dobkin v. Chapman*, 21 N.Y.2d 490, 503, 289 N.Y.S.2d 161, 171, 236 N.E.2d 451, 458 (N.Y. 1968), *quoting Walker v. City of Hutchinson*, 352 U.S. 112, 114 (1956)(citation omitted).. In order to permit court appointed service, Plaintiff must show that service would be "futile" even if diligent efforts were made to continue such process. *Liebeskind v. Liebeskind*, 86 A.D.2d 207, 210, 449 N.Y.S.2d 226, 228 (N.Y. App. Div.1982), *aff'd*, 58 N.Y.S.2d 858, 447 N.E.2d 74 (N.Y. 1983). Plaintiff must also demonstrate factually, and not with baseless assumptions, that service cannot be carried out under CPLR §308(2). *See Dime Sav. Bank of New York v. Mancini*, 169 A.D.2d 964, 964, 564 N.Y.S.2d 859, 859-860 (N.Y. App. Div.1991); *Markoff v. South Nassau Community Hosp.*, 91 A.D.2d 1064, 1064-65, 458 N.Y.S.2d 672, 673-674 (N.Y. App. Div.1983), *aff'd*, 61 N.Y.2d 283, 473 N.Y.S.2d 766, 461 N.E.2d 1253 (N.Y. 1984).

Plaintiff has only made attempts to serve Bruce Jennings at two locations, at the offices of B.L. Jennings, Inc. by improperly serving President Chris Larsen⁵ and at his current residence in Daytona, Florida by improperly serving a security guard. Both methods of service were invalid since these individuals did not have actual or legal authority to accept receive service on behalf Bruce Jennings. Plaintiff has not made a factual demonstration that service attempts by conventional methods would be futile, and thus, court appointed service should not be granted.

⁵ Service of the Summons and Complaint for Defendant Bruce Jennings upon Chris Larsen, President of B.L. Jennings, Inc. was ruled invalid by the Court on September 5, 2002. Ex. 2, pp. 14-15.

IV. Conclusion

For the foregoing reasons, Plaintiff has failed to satisfy its burden of establishing that this Court has personal jurisdiction over the Jennings Defendants or to establish that service of process on Bruce Jennings was valid. Accordingly, Defendants Bruce Jennings, Janice Jennings, Rhonda Jennings, Kimberly Jennings, Bradley Jennings, Jennings Firearms, Inc. of Nevada, Jennings Firearms, Inc. of California, Calwestco, Inc., RKB Investments, the Rhonda Jennings Nevada Trust, the Kimberly Jennings Nevada Trust, and the Bradley Jennings Nevada Trust Bruce Jennings respectfully requests that this Court (1) grant their Motions to Dismiss and Memorandums of Law in Support of their Motions to Dismiss for lack of personal jurisdiction and (2) grant Defendant Bruce Jennings' Second Motion to Dismiss and Memorandum of Law in Support of His Motion to Dismiss for Insufficiency of Service of Process, and for such further relief as this Court may deem proper and necessary.

Dated: New York, New York
February 21, 2003



Robert E. Scott, Jr. (RES 9592)
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and

Brian Heermance (BPH 6805)
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New York, NY 10038

Attorneys for Jennings Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2003, a copy of Defendants' Reply Memorandum of Law in Support of Motions to Dismiss for insufficiency of service of process and lack of personal jurisdiction was served electronically and mailed, first-class, postage prepaid, to Monica Connell, 111 Broadway, 4th Floor, New York City, New York 10006, Attorney for Plaintiff; Jeffrey M. Malsch, Renzulli, Piscioti & Renzulli, LLP, 300 East 42nd Street, New York, New York 10017, Attorneys for Defendant Atlantic Gun Tackle Distributing Co., Inc.; and Paul L. Kassirer, Lester Schwab, Katz & Dwyer, LLP, 120 Broadway, New York, New York 10271, Attorneys for Defendant Acusport Corporation.


Robert E. Scott, Jr.

(B0323011.WPD;1) 20147-17

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOAN TRUMAN SMITH

V.

BRYCO ARMS, Inc., et al.

CIVIL ACTION NO:

CV 02 3029 (JBW)

Honorable Jack B. Weinstein

FILED
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U.S. DISTRICT COURT
E.D.N.Y.
FEB 11 2003
BROOKLYN OFFICE

ORDER

Counsel for Defendants related to Bryco Arms, B.L. Jennings, Inc., Bruce Jennings, Jennings Firearms Inc. of Nevada, Jennings Firearms, Inc. of California, RKB Investments, and Calwestco have filed Motions to Dismiss the Complaint in this action on the grounds of Insufficient Service of Process, Personal Jurisdiction and Failure to State a Claim on the First Cause of Action for Negligence. After receipt of briefs and evidence and after hearing oral argument, it is now

ORDERED that the Motions by Defendants Bryco Arms and B.L. Jennings, Inc. for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for Failure to State a Claim Upon Which Relief Can Be Granted as to the First Cause of Action for Negligence are denied, and it is further

ORDERED that the Motions by Defendants Jennings Firearms, Inc. of Nevada, Jennings Firearms Inc. of California, and Calwestco for dismissal due to Insufficient Service of Process pursuant to Rule 4 of the Federal Rules of Civil Procedure are denied, and it is further

ORDERED that the Plaintiff's time to effectuate proper service on Bruce Jennings, Janice Jennings, RKB Investments, Rhonda Jennings Nevada Trust, Kimberly Jennings Nevada Trust, Bradley Jennings Nevada Trust pursuant to Rule 4 is extended thirty days from the date of this order, and it is further

gl

ORDERED that the Motions by Defendants Bruce Jennings, RKB Investments, Jennings Firearms Inc. of Nevada, Jennings Firearms, Inc. of California, and Calwestco for dismissal on the grounds of Lack of Personal Jurisdiction may be submitted for hearing after service issues pertaining to Bruce Jennings and RKB Investments are resolved.

Dated: ^{10/}September 7, 2002
Brooklyn, New York

Jack B. Weinstein
Senior District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
JOAN TRUMAN SMITH,
02-CV-3029
Plaintiff,
-against- :
United States Courthouse
Brooklyn, New York
BRYCO ARMS, ET AL,
Defendants. :
September 5, 2002
----- X 12:00 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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BY: LEONARD S. ROSENBAUM, ESQ.
Court Reporter: Holly Driscoll, CSR
225 Cadman Plaza East
Brooklyn, New York
(718) 260-2469

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 THE COURT: Motion is denied. It can't be said on
2 the basis of the information that we now have before us that
3 the plaintiff will not be able to establish the facts
4 supported by plaintiff's contentions and preliminary discovery
5 which would satisfy Hamilton v. Beretta. Motion denied.

6 Next motion.

7 MS. ROBERTS: Your Honor, the next motion we have
8 before the Court is the motion has been filed as three
9 separate motions on behalf of five defendants. The five
10 defendants are Bruce Jennings --

11 THE COURT: Well, Bruce Jennings is out so we
12 don't --

13 MS. ROBERTS: This is the Smith case and he was
14 served in this case also, his name is listed.

15 THE COURT: Well, you have exactly the same issues as
16 we already discussed, don't you?

17 MS. BARNES: Yes, Your Honor; however, with a
18 sufficient period of time under the rules to determine
19 Mr. Jennings' actual participation in this enterprise, it will
20 be demonstrated that Mr. Jennings and Ms. Jennings are, in
21 fact, the proper defendants in this action.

22 THE COURT: Here the motion is insufficiency of
23 process?

24 MS. ROBERTS: And lack of personal jurisdiction.

25 THE COURT: Well, are you claiming that the corporate

1 MS. BARNES: Your Honor, this motion is entirely
2 premature. The 120 days has not yet run. I have just
3 received answers from some of the other defendants. The
4 process server had, in fact, just sent over the papers. I had
5 not even had a chance to look at it. The affidavit indicates
6 clearly that this was a conversation had with the process
7 serving company, not with me.

8 I intended to serve him, Bruce Jennings was in New
9 York, I could have served him personally, I didn't. I mean I
10 was taking his deposition, I should have just served him here,
11 but be that as it may, I would simply ask the Court as to all
12 of these insufficient services, I understand my obligations
13 under Rule 4, the 120 days has not run, I would ask that the
14 Court extend that by 30, we will serve each of them
15 personally, both RKB which is a partnership, the various
16 trusts for the children of which Bruce Jennings and Janice
17 Jennings are the individual trustees and settlors. The trust
18 can be served through individual service. I will have Bruce
19 Jennings served personally and this motion, had it been dealt
20 with simply by a phone call saying, you know, I don't think
21 you have adequate service or could we have an extension, etc.,
22 to get adequate service, it could have been resolved.

23 THE COURT: Let me get this clear, as to B.L.
24 Jennings, Inc. and Jennings Firearms, Inc. of Nevada, service
25 is okay?

1 MS. BARNES: Yes, Your Honor.

2 THE COURT: As to Bruce Jennings, you want an
3 additional 30 days?

4 MS. BARNES: Yes, Your Honor.

5 THE COURT: Granted. As to Cal West Co.?

6 MS. BARNES: Cal West Co. is the predecessor
7 corporation of Bryco Arms, Your Honor, and Bryco Arms, as I
8 understand defendant's papers, it was properly served in
9 California. It is my understanding --

10 THE COURT: Is that right?

11 MS. ROBERTS: Bryco Arms was properly served.

12 THE COURT: Well, for the same reason I've just
13 stated, Cal West Co. and Bryco are properly served.

14 What about Jennings Firearms, Inc. of California?

15 MS. BARNES: That's the company prior to Cal West
16 Co., it goes Jennings Firearms, Cal West Co. and Bryco.

17 THE COURT: For the same reasons I've already
18 stated. So, you want time to serve RKB Investments?

19 MS. BARNES: Yes, Your Honor.

20 THE COURT: And Bruce Jennings himself, and who
21 else?

22 MS. BARNES: And Janice Jennings, Your Honor, and the
23 trusts of the children, Bradley Jennings, Rhonda Jennings and
24 Kimberly Jennings.

25 THE COURT: And the trust, 30 days, granted. Submit

1 an order on all the things I decided today. Agree on the form
2 of it. If not, provide counter-orders within 48 hours.

3 MS. BARNES: Your Honor, may I? The Jennings family
4 has counsel located in California who are, by their own
5 admission, solely engaged for the purpose of dealing with the
6 Jennings family firearms litigation. May we serve all -- if
7 there is an inability to serve Bruce and Janice individually,
8 may the plaintiffs have permission to serve the attorneys in
9 California who are designated solely for the conduct --

10 THE COURT: I can't give you such permission without
11 hearing from them as a matter of due process in advance.
12 Denied. Submit an order indicating everything I've decided on
13 this issue please.

14 MS. ROBERTS: Your Honor, also part of the
15 insufficiency of service of process motion is a lack of
16 personal jurisdiction over these five defendants. Is this a
17 motion you would prefer me to argue now or after service has
18 been --

19 THE COURT: After service, there's nothing to argue
20 at the moment.

21 MS. ROBERTS: Okay. And the individuals who you have
22 decided have already been properly served, shall I save the
23 argument for lack of personal jurisdiction and argue it all at
24 the same time?

25 THE COURT: Please.

EXHIBIT 3

PAGE 1 SHEET 1

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PAGE 3

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

1 N.A.A.C.P., ET AL, CV-99-3999, 1461, 7037

2 SWEETING, ET AL

3 Plaintiffs, :

4 v. : United States Courthouse

5 A.A. ARMS, ET AL, Brooklyn, New York

6 ACCUSPORT, ET AL,

7 Defendants. : May 10, 2000

8 : 10:00 o'clock a.m.

9 ----- X

TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

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Costa-direct-Barnes

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1 THE CLERK: NAACP, et al versus Arms, Inc., Sweeting,
 2 et al, versus A.A. Arms; NAACP, et al, versus AccuSport.
 3 THE COURT: Good morning.
 4 MR. SCHARF: My name is Fred Scharf for the motion
 5 of Mr. Jennings on jurisdictional --
 6 THE COURT: Perhaps you better come up here so the
 7 reporter can hear you.
 8 MR. SCHARF: As your Honor is aware, defendant
 9 Jennings has moved to dismiss on two grounds, the first, lack
 10 of personal jurisdiction. The second failure to state a claim
 11 on which relief can be granted due to the patent inadequacy of
 12 the allegations of the complaint concerning fraud and
 13 allegations of alter ego control of B.L. Jennings by defendant
 14 Jennings individually.
 15 I think all that really needs to be said in support
 16 of this motion is that your Honor examine paragraph 122 of
 17 this complaint, where Mr. Jennings' name is there, not John
 18 Smith. These allegations can be made against anyone --
 19 THE COURT: Excuse me. You're moving to dismiss the
 20 individual, correct?
 21 MR. SCHARF: Only the individual.
 22 THE COURT: Why is the individual in here?
 23 MS. BARNES: The individual is in here because
 24 almost over a period of 20 years as we have demonstrated
 25 somewhat in our responsive motion, Mr. Jennings as opposed to

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1 John Smith or any of the other principals in any of these
 2 almost closely held corporations has had a long history of
 3 using the corporations of which he is the president and
 4 principal stockholder for his own personal use and he acts for
 5 B.L. Jennings, Jennings Firearms and Bryco Arms as an alter
 6 ego.
 7 THE COURT: In what way? I don't understand. You
 8 haven't submitted --
 9 MS. BARNES: Your Honor, for purposes of a motion to
 10 dismiss, the court respectfully is asked to take the pleadings
 11 as we have stated them and through the course of discovery, we
 12 will be able to show that. There was some evidence in prior
 13 cases that Mr. Jennings has in fact used corporate assets for
 14 his own personal use and has circumvented certain corporate
 15 and also procedural norms in order to run the company -- run
 16 three companies in his own personal capacity.
 17 We have only made these allegations against
 18 Mr. Jennings, Mr. Daniels and Ms. Daniels. Those are the only
 19 three in this case, and clearly, those are the only ones we
 20 had had any kind of evidence about their activities
 21 personally.
 22 THE COURT: There's such a strong presumption
 23 against piercing corporate veils under New York law. It seems
 24 to me you have to come up with something more.
 25 MS. BARNES: Your Honor, we would then respectfully

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1 request to have a brief period of discovery in which we obtain
 2 that information in admissible form. We would just indicate
 3 to the court that Mr. Jennings has not submitted an affidavit
 4 of any kind in this litigation, nor has he refuted in part by
 5 his own personal statements any of the allegations that he has
 6 used B.L. Jennings and the corporation Bryco Arms.
 7 The other problem, your Honor, that has come up in
 8 these cases is that a number of firearms companies have gone
 9 out of business and have reemerged after going through
 10 bankruptcy proceedings, either Title VII or Title XI and have
 11 reemerged with another name at another time. While that
 12 doesn't specifically implicate Mr. Jennings, there has been a
 13 history we've laid out in our papers of four or five gun
 14 companies Mr. Jennings has been involved in that have been
 15 dissolved, that have produced guns that have caused mayhem and
 16 havoc in disproportionate numbers in this state and other
 17 states. Mr. Jennings' activities circumvent all responsible
 18 corporate norms and leave us no possibility to obtain the
 19 relief we're seeking in this case except by way of dealing
 20 with him personally.
 21 THE COURT: I'm going to dismiss as to Jennings
 22 personally. You can move to reinstate later if something
 23 comes up. There isn't enough here.
 24 Bear in mind you're suing, as I understand it, for an
 25 injunction. If an injunction is issued, it can be broadened

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Costa-direct-Barnes

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1 to include people who are connected with a defendant that
 2 isn't joined.
 3 MS. BARNES: Thank you, your Honor.
 4 MR. SCHARF: Thank you, your Honor.
 5 THE COURT: Next motion?
 6 MS. BARNES: Your Honor, there were three movants.
 7 One has been discontinued from the action, that's A.A. Arms.
 8 STI withdrew its motion and submitted an answer so they're
 9 out. Felk, I believe your Honor indicated by letter to the
 10 court, they were not coming and requested your Honor dismiss.
 11 Plaintiffs would be happy to submit on their papers. They
 12 apparently are not going to orally argue their part of the
 13 motion to dismiss.
 14 THE COURT: You're opposing dismissal?
 15 MS. BARNES: I've submitted papers for Felk. They
 16 moved to dismiss on, I think, a failure to state a claim cause
 17 of action.
 18 THE COURT: Denied. I'm not going to grant
 19 independent motions on failure to state a claim on the
 20 material before me. There are substantial issues which should
 21 be briefed with respect to standing, appropriateness of
 22 equitable relief and other matters, but there isn't a basis
 23 for this motion on these papers; denied. That's as to
 24 defendant Felk.
 25 MS. BARNES: A.A. Arms has been dismissed.

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EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:

N.A.A.C.P.,

99-CV-3999
99-CV-7037

Plaintiff,

-against- :

United States Courthouse
Brooklyn, New York

ACCUSPORT CORP., ET AL,

Defendants. :

September 5, 2002
11:30 a.m.

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 consistently blocked by defense counsel so that to say that
2 the evidence doesn't show it, the evidence very likely does
3 show it but those were the matters specifically not produced
4 pursuant to a direct request by plaintiff's counsel and here
5 defendant has taken advantage of the fact that we're under
6 this enormously difficult trial schedule to use that to not
7 produce, to force the compelling of a motion in this matter.
8 So, for the record, I think that the evidence will show that
9 the funds were commingled, fraud was committed, etc.

10 THE COURT: The motion is denied. There's not
11 sufficient evidence of a reason not to treat these
12 corporations as valid.

13 MR. SCOTT: Thank you, Your Honor.

14 Your Honor, the next motion that you're going to be
15 hearing is in the Smith case and my associate is here to argue
16 those motions. Unfortunately, I have another hearing and have
17 to leave. She's admitted to the bar of New York and her
18 application is pending for admission to this court which is I
19 think going to be heard next week and I would like to, as far
20 as formalities and stuff, have her admitted for purposes of
21 arguing the motions in the Smith case.

22 THE COURT: We'll be very pleased to have her.

23 MR. SCOTT: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (End of proceedings.)